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FM AMEMBASSY KUWAIT
TO RUEHC/SECSTATE WASHDC IMMEDIATE 0777
INFO RUEHZM/GULF COOPERATION COUNCIL COLLECTIVE PRIORITY
RUEHRH/AMEMBASSY RIYADH PRIORITY 2493

C O N F I D E N T I A L SECTION 01 OF 04 KUWAIT 000165

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STATE FOR NEA/ARP AND EEB; RIYADH PLEASE PASS TO AUSTR
DONNELLY AND BUNTIN

E.O. 12958: DECL: 02/04/2013

TAGS: [ECON](#) [ETRD](#) [PGOV](#) [KU](#)

SUBJECT: SCENESETTER FOR AUSTR DONNELLY'S VISIT TO KUWAIT

REF: A. KUWAIT 127

[B.](#) KUWAIT 47

Classified By: CDA Alan G. Misenheimer reasons 1.4 (b) and (d)

[¶](#)11. (SBU) Shaun, we look forward to and warmly welcome your visit to Kuwait on February 13 and 14 for the third round of TIFA talks, and the first in Kuwait. In addition to the TIFA Council meeting on February 14, we have arranged meetings for you with the Amir's Economic Advisor Dr. Yousef Al-Ebraheem, a strong backer of the TIFA; Under Secretary of Information Shaykh Faisal Khalifa Al-Malik Al-Sabah; and the Under Secretary of Finance Khaleefa Hamada (both the Ministers

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regrettably will be out of town). The TIFA Council meetings will be followed by a press conference at the embassy and followed in turn by a reception hosted by the Charge at the Ambassador's residence, which we expect the Minister of Commerce to attend along with leading Kuwaiti and American business representatives. The TIFA council meeting and lunch will take place at the nearby Radisson SAS hotel.

Trade and Investment Framework Agreement (TIFA)

[¶](#)12. (U) Minister of Commerce Falah Mohammed Fahed Al-Hajri was eager to host this round of TIFA negotiations but unfortunately has been pulled away unexpectedly on regional travel with the Prime Minister. He expects to return the afternoon of February 14. The Under Secretary of Commerce and Industry Rasheed Al-Tabtabai will attend the entire session of the Council meeting. We have provided the Ministry with the proposed agenda sent to us by USTR. Our contacts at the Ministry tell us that they are prepared to discuss each of the proposed topics. The GOK is also looking forward to discussing a possible Bilateral Investment Treaty (BIT) during this meeting. We have cautioned that the signing of any treaty or agreement is not a realistic goal for this Council meeting.

[¶](#)13. (U) In an attempt to dampen MOCI's unrealistic expectations regarding the imminent signing of an FTA, Charge Misenheimer met with the Minister of Commerce on January 30 (Ref A) and clarified that a Free Trade Agreement will not be signed this year. Nevertheless, the GOK is looking for some positive outcome -- a "reward" (such as an announcement of a BIT) for progress on some legislative fronts (Ref B). In the last two months the GOK passed four key pieces of legislation dealing with economic reform. You should commend Kuwait for the progress made, while stressing that a lot more needs to be done in the areas of intellectual property rights protection and public contracting, among other areas.

¶4. (C) Your arrival in Kuwait coincides with a period of considerable agitation on the political front. On October 28, the Kuwaiti Government formed a new cabinet. This major cabinet shuffle came in the wake of growing threats from opposition MPs to formally question ("grill") several ministers. Seven ministers, including Foreign Minister Shaykh Dr. Mohammad Al Sabah and Prime Minister Shaykh Nasser Mohammad Al Sabah, were retained with no change in their portfolios. This is the fourth cabinet formation since the Amir formally took over leadership of the country in January 2006. The changes are an attempt on the Amir's part to end the political gridlock in the country resulting from the hostile and dysfunctional state of relations between the Government and the National Assembly. Prospective grillings have led to rampant rumors of the Amir dissolving Parliament for the second year in a row. The Minister of Commerce and Industry Al-Hajri is the latest Minister to be threatened with Parliamentary grillings. While some key portfolios for the USG have changed, such as Finance, Oil, and Social Affairs and Labor, there have not been any changes in Kuwait foreign policy.

¶5. (C) The new Finance Minister, Mustafa Jassem Mohammad Al-Shimali, most recently worked in investment in the private sector, but previously held the office of Assistant Under Secretary for Economic Affairs and Acting Under Secretary of

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Finance from January 2005 until December 2006. Al-Shimali has a strong technical background in the fields of management, business and commerce in both the private and government sectors. We regret that the Finance Minister will be out of Kuwait during your visit.

¶6. (C) U.S.-Kuwait relations, nevertheless, remain strong and have been bolstered by a series of high-level visits

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throughout 2007 and into early 2008. The President (January 2008), First Lady (October 2007), Secretary of State (January 2007), Secretary of Defense (August 2007), and Admiral Fallon (April and September 2007) have all visited Kuwait to reinforce the bilateral relationship and underscore the importance of Kuwait's support for stability and reconstruction in Iraq.

Recent legislative reforms

¶7. (SBU) Kuwait's Parliament passed three important economic laws on January 9 to privatize Kuwait Airways, to control investment related to public properties (especially under Build-Operate-Transfer contracts), and to create public-private partnerships to own and operate customs facilities and warehouses near the Iraq border. This follows the passage of a long-awaited tax law on December 26 that reduced taxes on foreign corporations from 55 percent to 15 percent. This sudden and unexpected wave of economic lawmaking marked a breakthrough in the legislative deadlock of the past several years. Under the first law, state-owned Kuwait Airways Corporation (KAC), which has operated at a loss for 17 of the last 18 years and is expected to lose USD 35 million this year, will be transformed into a private company within the next two years after two independent international auditors have valued the company's assets. Under the law, 35 per cent of the company will be sold to a "core investor," which will be the local or foreign company making the highest bid. Forty per cent will be sold to Kuwaiti citizens through an IPO. Government institutions will retain a 20 per cent stake, and the remaining five per cent will be distributed equally among current KAC employees.

The government has decided that Kuwait Airways will not purchase any new aircraft until the privatization is complete, although it reserves the option of leasing aircraft

in the interim. KAC operates a fleet of 15 Airbus and 2 Boeing aircraft.

¶18. (SBU) The second law establishes clear guidelines regarding the sale, lease, or transfer of state-owned land (about 95% of the total land area of Kuwait) to local or foreign investors to implement development projects. Specifically, the law governs Build-Operate-Transfer (BOT) and Build-Own-Operate (BOO) contracts, which have been suspended in Kuwait since the State Audit Bureau cited widespread irregularities in the awarding of contracts in November 2006. The law establishes a high commission for state properties and bans any other government institution from allocating state land to any project without the approval of the new commission. The law stipulates that new companies will be established to implement major projects on state land with a 40 per cent share sold in an auction to an investor, 50 per cent sold to Kuwaiti citizens in an IPO, and the remaining 10 per cent sold to the local or foreign company implementing the project. The law limits the term of BOT contracts to 30 years with the exception of "special" projects, which can continue for up to 40 years. The passage of this law represents a significant opportunity for America project management, engineering, and construction companies. At the same time it will allow the Kuwaiti government to award major contracts for badly needed infrastructure projects.

¶19. (SBU) The third law authorizes the formation of one or more companies to establish and run warehouses and associated customs facilities near the Iraqi border. The law states that 26 per cent of each company will be sold to a "core" local or foreign company, 24 per cent to government institutions, and 50 per cent to Kuwaiti citizens in an IPO. Under the new law, an existing contract between the GOK and the major Kuwaiti logistics company and DOD contractor Agility may be canceled or renegotiated. New facilities built under this law would largely be used to support DOD contracts associated with Operation Iraqi Freedom.

Intellectual Property Rights

¶10. (SBU) Kuwait continues to make progress in the areas that the Special 301 Report identified for improvement and that improved Kuwait's standing from the Priority Watch List to the Watch List. The most noticeable improvements have been in the area of enforcement. A significant increase in frequency and scope of raids and seizures has contributed to a noticeable decrease in display of counterfeit items in local shops and malls. However, many shops still continue to store and sell counterfeit items from backrooms. Kuwait has not yet passed any amendments to IP laws although most of the

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amendments have been drafted and forwarded for review. Ratification of WIPO treaties has also been a slow process in Kuwait. GOK has not yet ratified any WIPO internet treaty but is reviewing Kuwaiti laws to address WIPO requirements. Kuwait has drafted amendments to IP legislation (copyright, trademark and patent laws) that are currently in the Cabinet Council for review. GOK does not have a timeline as to when these bills will be presented to the National Assembly for approval. Post is not optimistic that these laws will be passed in the near term.

¶11. (U) Kuwait has made significant strides in improving the IPR enforcement mechanism in all relevant departments and agencies in the GOK. Ministry of Commerce and Industry (MOCI), Ministry of Information (MOI), and Kuwait Customs have all established IPR enforcement offices that have trained personnel to conduct raids, identify pirated goods, and conduct arrests and seizures. In 2005, Customs established an IPR group dedicated to identifying pirated items at the land, sea and airports. This group is active in conducting inspections at the ports. From 2006 to 2007,

there has been a significant increase in the number of raids and inspections conducted by the GOK. According to MOCI statistics, MOI and MOCI have increased the frequency and scope of their raids, which have resulted in significant arrests and seizures. In 2006, MOI referred 546 cases to commercial prosecution and closed down 30 shops. MOCI conducted 42 raids between January and May 2007 compared to 57 raids in all of 2006. These raids have yielded several hundred thousand counterfeit CDs, DVDs, video games and other electronic items.

¶12. (U) The GOK has not, however, issued sentencing guidelines to judges to ensure that violators are adequately penalized. Insignificant monetary penalties and no mandatory jail time have rendered arrests and prosecutions meaningless. Current penalties do not serve as a deterrent to violators. According to MOCI, draft amendments to IP laws include stricter penalties including mandatory minimum penalties and jail time for serial offenders.

Food Safety and Biotechnology

¶13. (U) While the GOK has expressed concerns over the safety of biotech foods in the past, the Embassy and Dubai-based Agriculture Trade Office have worked to counter those concerns, and thus far, officials remain supportive of following international guidelines on issues such as biotech labeling. Obtaining Kuwait's commitment to a science-based regulatory structure for biotech foods under the TIFA could help to prevent the introduction of restrictive import or labeling policies in the future and position Kuwait as a leader on this issue within the GCC.

¶14. (U) Food import procedures in Kuwait are cumbersome in relation to GCC members like the UAE and Bahrain and would likely benefit, at least in principle, from GCC efforts to standardize food import procedures. Officials in Kuwait have been receptive to USG comments on the GCC food import proposal and seem to be prepared to play a constructive role in resolving this issue.

¶15. (U) Kuwaiti standards officials have been less willing to support U.S. concerns about GCC food labeling and shelf life standards, largely due to a perception that the U.S. did not object to key provisions of these standards during Saudi Arabia's WTO accession. While officials seem to agree that Codex guidelines could be readily adopted as GCC standards, they seem reluctant to counter Saudi Arabia's influence on these issues within the GCC. The TIFA process provides an opportunity for Kuwait to join Bahrain and Oman as advocates within the GCC for adherence to international guidelines.

Kuwait Investment Authority (KIA)

¶16. (SBU) We, through high-level visits from Treasury and other agencies, continue to encourage Kuwait investment in the U.S. and promote the development of a set of best practices for Sovereign Wealth Funds (SWFs). Treasury officials assured KIA that the development of a set of non-binding best practices will help dispel negative perceptions of SWFs. KIA seems receptive to our suggestions and are making small steps towards greater transparency in their investment mechanism. Deputy Secretary Kimmitt visited Kuwait in January.

¶17. (U) In November 2007, Kuwait Petroleum Corporation (KPC)

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CEO Saad Al-Shuwaib announced a joint venture between state-owned KPC subsidiary Petrochemicals Industries Company (PIC) and U.S.-based Dow Chemical Company, which represents Kuwait's largest ever foreign investment and a key opportunity for Kuwait to diversify its economy, expand its presence in high-growth emerging markets, maximize the value

of its hydrocarbon resources, and create jobs for Kuwaitis. The 50-50 JV will be modeled on the success of PIC's Kuwait-based Equate joint venture with Dow but will have a more international orientation. Al-Shuwaib expects the company, headquartered in the U.S., to be established in late 2008 with about 5,000 employees and projected revenues of about USD 11 billion. This company will partner with Sinopec and possibly Shell in a USD 5 billion refinery and petrochemical complex in China's Guangdong province, a project approved by the Chinese government during Shuwaib's recent visit to China.

¶18. (U) On January 15, KIA announced that it had agreed to a USD 3 billion investment in Citi and USD 2 billion investment in Merrill Lynch. KIA, which manages at least USD 213 billion in assets through its General Reserve Fund and Fund for Future Generations, views these new investments in Citi and Merrill as it does its major stakes in BP and Chrysler -- as long-term, "core investments." KIA officers insist that it has always invested in U.S. financial institutions as a long-term, passive financial investor and a stable shareholder.

Kuwait-Iraq Relations

¶19. (C) We continue to press the GOK on expanding its trade relationship with Iraq. Several high-level visitors including POTUS emphasized the role that Kuwait can play in strengthening Iraqi democracy through expanded trade. The GOK, however, has effectively shut down its borders to Iraqi goods, citing sub-standard products, lack of inspections and quality control, and contamination. Kuwait insists, however, that it has an "open border" policy with Iraq and does not have any explicit restrictions on Iraqi products. We continue to encourage GOK officials and private sector business groups to take advantage of the progress in security made in recent months in Iraq by investing in Iraq and accepting Iraqi exports. We encourage Kuwait to exchange trade delegations with Iraq and offer training and meetings between key GOK and GOI customs officials to improve the customs mechanism in Iraq. The GOK has committed to us, privately, that a Kuwaiti Ambassador will arrive in Iraq soon. Major General (retired) Ali Al-Mu'min, head of the Humanitarian Operations Center (HOC) in Kuwait, is Kuwait's Ambassador-designate to Baghdad.

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